

REMARKS**A. Title of Application**

In response to the Examiner's objection to the title, a new title is added to the application to correspond with the claim focus.

B. Priority Recitation

The first paragraph and first sentence of the Specification is amended to update the status of all non-provisional patent applications recited in the claim of priority.

C. Rejections Based on 35 USC Sec. 112

Applicant has amended the claims to delete objected terms. In dependent claims, the jacket is made of elongated members. Adequate support for this amendment is found in the specification. For example, page 12, line 22 references the longitudinal axes and the figures show elongated members. In dependent claims, the elongated members are identified as strands formed of a plurality of fibers (for example, claim 25).

D. Rejections Based on 35 USC Sec. 101

The Examiner has rejected claim 23 on the basis that the claim purports to include a human body portion. Claim 23 is amended to recite the dimensions of the device and not to positively recite the combination of the jacket and the heart.

E. Rejections Based on 35 USC Sec. 102(b)**1. Apparatus Claims****i. Sizing**

The Examiner has rejected the claims 18 – 23 and 25 based on U.S. Patent No. 5,339,657 to McMurray. Claims 18 and 22 – 24 are rejected on U.S. Patent No. 4,196,534 to Shibamoto. Claims 18 and 22 – 24 were rejected on U.S. Pat. No. 5,702,343 to Alfernness.

Applicant has amended the claims in a manner believed to clearly distinguish over the references. Specifically, in claim 1, Applicant has amended the claim to recite that the jacket material is dimensioned so as to be adjusted on the heart to conform to the external geometry of

the heart and surrounding at least the ventricles. Neither of McMurray or Shibamoto show such a sizing.

Applicant respectfully submits that reciting the sizing of a device with respect to human anatomy is of patentable distinction over the prior art. Shibamoto and McMurray show no such sizing. In Ex parte Crigler, 125 USPQ 448 (PTO Bd. of App. 1959), the Board held, in a closely analogous case, claim language describing a size of a claimed element with reference to human anatomy was entitled to patentable weight. The Board reversed a final rejection and approved claim language stating "the adhesive on the surface is dimensioned so as to be attached by adhesion to continuous and spaced ear surfaces." 125 USPQ at p. 451 (emphasis added). The Board reasoned the quoted language "constitutes a structural limitation as to the size of the attaching means and therefore distinguishes from the [cited art]. Although the size of human ears varies, it is our opinion that neither [of the references] is dimensioned to fit on an ear and if either were made small enough to fit an ear, each would lose its usefulness for its disclosed purposes. 125 USPQ at p. 451 (emphasis added).

Shibamoto describes a large bag for containing vegetables such as onions. There is nothing in Shibamoto regarding sizing of the bag and nothing to suggest modification of sizing to fit onto a human art in such a manner as to be snugly placed on the heart to treat cardiomyopathy in the manner described in the present invention. The only sizing described in Shibamoto is a bag to contain 20 kilograms of onions ('534 patent, column 4, line 14).

McMurry describes a large net for fishing, cargo, sports, etc. ('657 patent, column 2, line 5).

ii. Directional Compliance

With respect to each of Alferness, Shibamoto and McMurray, claim 1 is amended to reflect the structure that the jacket is more compliant in a longitudinal direction than in a circumferential direction. Namely, in response to any given force, the jacket stretches more longitudinally than circumferentially. No such structure is taught in the cited references.

2. Method Claims

In addition to the foregoing, Applicant has submitted an independent method claim (Claim 29) for treating a heart disorder by taking a directionally compliant jacket and placing it

on a heart to be more compliant in the longitudinal direction. Applicant respectfully submits there is nothing in any of the cited references to suggest such a use.

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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